

FACTUAL HISTORY

On August 5, 2004 appellant, then a 25-year-old industrial hygienist, filed a traumatic injury claim alleging that he sustained injury when, during an accident investigation on July 29, 2004, he possibly came in contact with blood and tissue matter.¹ He did not stop work.

In an August 4, 2004 incident exposure report, appellant indicated that, while conducting an inspection, he had to walk through a site where a worker had died due to a cylinder explosion. He indicated that the site was contaminated with the victim's body tissue, blood and other bodily fluids. Appellant indicated that he was not wearing gloves and asserted that he might have handled contaminated materials. He noted that he had a scab on his left thumb and a cold sore scab below his mouth which may have come in contact with the materials.

The record contains a Form CA-16, completed on August 4, 2004, authorizing appellant to receive medical care from Dr. Raymond Gyarmathy, a physician Board-certified in emergency medicine. In a form report dated August 4, 2005, he noted that appellant reported being exposed to bodily fluids and remains at an accident site on an unspecified date. Dr. Gyarmathy did not provide a diagnosis or indicate the existence of disability, but referred appellant for a series of hepatitis B vaccinations.

By letter dated August 20, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted a statement dated August 26, 2004, in which he further discussed the circumstances he encountered on July 29, 2004. He indicated that the victim's body tissue, blood and other bodily fluids at the accident site had turned brown due to exposure to the air and posited that, therefore, he might have inadvertently touched the materials without realizing it. Appellant noted that he had not developed any medical condition since July 29, 2004.

Appellant also submitted an August 17, 2004 report in which Dr. Robert M. Chapa, an attending physician specializing in emergency and occupational medicine, noted that he reported being exposed to body parts secondary to an explosion. Dr. Chapa provided a diagnosis of "exposure to body parts secondary to an explosion" and indicated that he had performed blood work on appellant. In a report dated September 14, 2004, he diagnosed "exposure to body parts" and indicated that testing had been performed for hepatitis and human immunodeficiency virus.

In an undated report, Dr. Gyarmathy noted that appellant reported being exposed to bodily fluids and remains about 48 days prior. He diagnosed "body fluid exposure" and indicated that appellant had been referred for completion of a series of hepatitis B vaccinations. The record also contains an unsigned report indicating that he was seen at the Jacksonville Memorial Hospital on August 5, 2004, at which time he reported possible exposure to bodily fluids.

By decision dated October 4, 2004, the Office denied appellant's traumatic injury claim. The Office accepted that he established the occurrence of the employment incident on July 29,

¹ Appellant indicated that he had open sores on his left hand and face.

2004 as alleged, but found that appellant did not submit sufficient medical evidence to establish that he sustained an employment injury as a result

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The term injury as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.⁷

ANALYSIS

Appellant claimed that he sustained injury when he was exposed to bodily matter on July 29, 2004. He has established the occurrence of the employment incident on July 29, 2004 as alleged, *i.e.*, appellant inspected an accident site on July 29, 2004 which contained an explosion, victim's body tissue, blood and other bodily fluids and he might have come in direct contact with these materials with his ungloved hands. However, he did not submit sufficient medical evidence to establish that he sustained an employment injury as a result.

Appellant submitted an August 4, 2005 report and an undated report in which Dr. Gyarmathy, an attending physician Board-certified in emergency medicine, noted that he

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁵ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

reported being exposed to bodily fluids and remains at an accident site.⁸ However, he did not provide a diagnosis or indicate the existence of disability. Dr. Gyarmathy referred appellant for a series of hepatitis B vaccinations, but he did not provide any indication that he sustained injury due to the July 29, 2004 employment incident or any other employment factor.

Appellant also submitted August 17 and September 14, 2004 reports, in which Dr. Chapa, an attending physician specializing in emergency and occupational medicine, noted that he reported being exposed to body parts secondary to an explosion. He provided diagnoses of “exposure to body parts secondary to an explosion” and “exposure to body parts.” However, Dr. Chapa did not provide any indication that appellant sustained a diagnosed condition due to such exposure. He noted that blood work had been performed, including testing for hepatitis and human immunodeficiency virus, but he did not provide an opinion that appellant sustained injury due to the July 29, 2004 employment incident.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on July 29, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision the Office of Workers’ Compensation Programs’ October 4, 2004 decision is affirmed.

Issued: May 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Dr. Gyarmathy was authorized to treat appellant per a Form CA-16 completed on August 4, 2004.